

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1905 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.

2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge? No.

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SAVITABEN GOPALBHAI PATEL

Versus

RUPABEN MAHESHBHAI PANCHOLI

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Appearance:

MR SURESH M SHAH for Petitioner

MR DIVYESH C SEJPAL for Respondent.

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 28/04/97

ORAL JUDGEMENT

By the order dated 14-3-1997 rule was issued, since it was submitted that one of the questions regarding interpretation of Section 13-A of the Bombay, Rent, Hotel and Lodging House Rates Control Act (for short 'the Rent Act') was pending consideration by the Division Bench in C.R.A. No.367 of 1983. However, in

Misc. Civil 848/97 it was brought to the notice of this Court that this question was decided by the Division Bench in XXXVII (1) - 1996(1) G.L.R. 375 in the case of Suresh Govindji Kelkar Vs. Ratilal Dahyabhai and hence the order issuing rule passed on 14-3-1997 was recalled. That is how, this Civil Revision Application is placed for admission today.

2. By consent, once again rule is issued and service of rule is waived.

3. The order which is impugned in this Civil Revision Application is passed by the learned Assistant Judge, Rajkot in Civil Misc. Appeal No.81/96. The order reads as under:-

"The appeal is allowed.

The order of the learned Judge, Small Causes Court, Rajkot, below Exh.5 in Reg. Civil Suit No.129/96 is set aside. It is further directed that the appellant defendant shall not make any construction on the open space kept in terrace or the construction which may close the above open space kept in the terrace till the final decision of the suit. The appellant-defendant is further permitted to make the construction on the terrace of the suit premises except as provided above."

4. After some amount of submissions, learned advocates as have been instructed by their respective clients, have agreed that instead of injunction and liberty to construct over the terrace as reflected by the aforesaid order the respondent landlady shall be under permission to make construction over the terrace shown in orange colour in the map which is permitted to be placed on record. There shall be no injunction against the said construction which is permitted to be made in the terrace which has been earmarked by showing yellow colour linings with orange colour boundary in the map which is permitted to be placed on record. The respondent landlady, however, will not make construction on the terrace which is shown in greenish blue boundary in the map which is permitted to be placed on record till final disposal of the suit. It is further clarified that the defendant-land-lady will not make any construction as agreed by her in her written statement Exh.11 (i.e. on the ventilation portion) till final disposal of the suit. The suit shall be expeditiously heard and decided by the Trial Court.

5. In view of the aforesaid clarification of the Appellate Court's order, by the agreed formula, Mr. S.M. Shah, learned Advocate for the petitioner seeks permission to withdraw this revision application. Permission is granted. This revision application stands disposed of as withdrawn. Rule is discharged subject to the aforesaid clarification, with no order as to costs.

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